



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1996

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR96-2190

Dear Ms. Armstrong:

On behalf of Travis County (the "county"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102231.

The Travis County Sheriff's Office received a request for a certain internal affairs report. You assert that the requested information is excepted from required public disclosure based on Government Code sections 552.101, 552.103, and 552.108.

Section 552.101 excepts from required public disclosure information that is made confidential by law, including information made confidential by statute. You raise this exception in regard to a letter from the Texas Department of Health (the "department"). The department is the state agency with primary responsibility for providing health services, including indigent health care. *See* Health and Safety Code § 11.004(b)(3). Such responsibility had formerly been that of the Texas Department of Human Services ("DHS"). State and federal law prohibits DHS from releasing information about welfare clients. *See* 42 U.S.C. § 602(a)(9), Hum. Res. Code §§ 12.003, 21.012, Open Records Decision No. 584 (1991). We believe the transfer of the responsibility for providing indigent health care from DHS to the department includes the responsibility to maintain the confidentiality of information about welfare clients. *See* Acts 1991, 72nd Leg., 1st C.S., ch 15, § 1.07. Furthermore, the transfer of the information to the county does not destroy the confidentiality of the information. *See* Open Records Decision No. 567 (1990). We, therefore, conclude that the county must withhold this letter from disclosure as information deemed confidential by law. Gov't Code § 552.101.

Section 552.103(a) of the Government Code excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You assert that the county reasonably anticipates litigation because an individual has threatened to sue the sheriff's office and attempted to retain an attorney. You inform us that an attorney stated to a representative of the sheriff's office that he did not represent the requestor, but that he might help him if the requestor obtained enough information.

Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5.

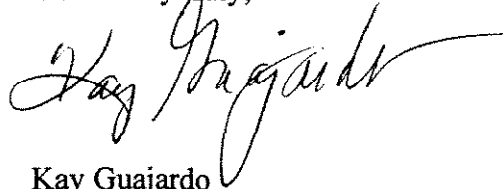
We do not believe the county has established that litigation is reasonably anticipated in this case. Consequently, the county may not withhold the information from disclosure based on section 552.103.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). The information concerns an investigation of an allegation of excessive force used at the central booking facility. You assert that section 552.108 applies because the information concerns both an investigation into possible crime and a law enforcement matter. You contend that the information relates to an incident involving an investigation into possible crime because officers attempted to remove from the arrestee's mouth a piece of candy that could have been an illegal drug. You further contend that the incident concerns a law enforcement matter because of questions concerning the use of force in this case.

The information indicates that no criminal prosecution resulted from the investigation. Section 552.108 generally is not applicable to information relating to complaints against law enforcement officers when no criminal investigation or prosecution results from an investigation of allegations of officer misconduct. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Consequently, the county may not withhold the requested information based on section 552.108.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 102231

Enclosures: Submitted documents

cc: Mr. David Lee Rodriguez  
105 West Riverside, Suite 101  
Austin, Texas 78704  
(w/o enclosures)